

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7158 of 1985

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? Yes
2. To be referred to the Reporter or not? Yes

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3. Whether Their Lordships wish to see the fair copy of the judgement? NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No
5. Whether it is to be circulated to the Civil Judge? No

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PADHERIYA U. HARIBHAI

Versus

STATE OF GUJARAT

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Appearance:

MR SR BRAMBHATT for Petitioners  
MR HL JANI for Respondent No. 1, 2

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CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 05/12/97

ORAL JUDGEMENT

1. The petitioners who are holding the post of Physical Training Instructor in the colleges of the Government of Gujarat filed this Special Civil Application and prayer is made for declaration of their

entitlement to draw salary and allowance in the Pay Scale of Rs. 700 - 1600 from the date of their appointment and further direction to the respondents to pay arrears of salary to the petitioners accordingly. Another prayer has been made for setting aside the order at Annexure-D dated 4.12.1985 of the Principal of St. Xavier's College, Ahmedabad, under which one petitioner has been informed that he is not entitled for the Pay Scale of Rs.700 - 1600 and the earlier pay scale which was given to him is cancelled and the amount should be recovered. The amount to be recovered is also mentioned therein.

2. Under the Government Resolution dated 19th December, 1983, the pay scale of the post of Physical Training Instructor was revised to Rs. 700 - 1600 w.e.f. 1.4.1980. The earlier existing pay scale of the post of Physical Training Instructor was Rs. 550 - 900 w.e.f. from 1.1.73. So, this resolution was given effect from 1.4.80 though it is of the date of 19th December 1983. The petitioners were working on the post of Physical Training Instructor in various Colleges from the date of their appointment which is mentioned in para - 2 of the Special Civil Application. It is true that they entered into service after 1.4.1980 but much prior to the date of the Resolution dated 19th December, 1983. So, by virtue of cut off date which is fixed 1.4.1980, the petitioners have become disentitled for getting the pay scale of Rs. 700 - 1600.

3. The learned Counsel for the petitioners contended that the same question has been decided by this Court in Spl. C.A. No. 872 of 1985 on 18th April, 1986. I have gone through the judgment of this Court in the aforesaid Special Civil Application and I find there from that this matter also arising out of the Government Resolution dated 19th December, 1983 though it pertains to the Librarians. From the Resolution, for the entitlement of the pay scale of Rs. 700 - 1600, the Physical Training Instructors who are already in service on or before 1.4.80 have to possess the qualification as given out in Annexure-I to the said resolution and those Physical Training Instructors who have been appointed after the date i.e. 1.4.1980 have to acquire the qualification for the entitlement of pay scale as prescribed in Annexure-II to the resolution. All the petitioners admittedly possessed the qualification as prescribed in Annexure-I to the said Resolution but because of the cut off date of 1.4.1980 they have to acquire qualification as prescribed in Annexure-II to the resolution for the entitlement of the pay scale of Rs. 700 - 1600. This question has been considered by this Court in the aforesaid case and it has

been held that those persons who have been appointed before 19th December, 1983 and have the qualifications as prescribed in Annexure-I to the aforesaid Resolution are entitled for the revised pay scale of Rs. 700 - 1600. However, those persons who have been appointed after December 1983, they shall be entitled for this pay scale only after they acquired the qualification as prescribed in Annexure-II to the said resolution. This court had further ordered that those persons should be given five years time from December 19, 1983 to acquire such qualification. The conclusion reached by the learned Single Judge has been confirmed by the Division Bench in LPA No.79 of 1988. This matter is squarely covered by the aforesaid judgment of this court to which nothing more is required to be added except to say that other wise also the learned counsel for the respondent failed to justify any rationality in prescribing 1.4.80 as cut off date for benefits of the pay scale of 700 - 1600 for the Physical Training Instructors who have been admittedly appointed before the date on which notification was made.

4. In the result, this Special Civil Application is allowed and it is declared that the petitioners are entitled for the Pay Scale of Rs. 700 - 1600 from the date of their appointment. The respondents are directed to undertake and complete the exercise of fixation of the pay of the petitioners on the revised Pay Scale of Rs. 700 - 1600 with effect from the date of their appointment and the arrears thereof should be paid to them within two months next. Rule is made absolute as aforesaid with no order as to costs.

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